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United States Circuit Court of
Appeals

FOR THE NINTH CIRCUIT

GUST FONDAHN,

Appellant.

vs.

SCHOONER "C. S. HOLMES," her
tackle, apparel and furniture,

Appellee.

BRIEF OF APPELLANT

DANIEL LANDON,

Proctor for Appellee

1055 Empire Bldg., Seattle, Wash.

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STATEMENT.

The amended libel of appellant purported to set out four causes of action, namely: First, recovery for damages for personal injury; second, damages for negligence in furnishing medical treatment; third, expense of medical treatment, and fourth, wages. The matter was before the lower court upon appellee's exceptions to amended libel. The court there sustained the exceptions of appellee

against the amended libel upon the first two causes of action and overruled all other exceptions. This is an appeal from the court's ruling upon sustaining the exceptions to the first two causes of action.

Upon the first point the amended libel is as follows:

"That while on the return voyage and while performing his duty as a seaman, on the third of January, 1913, in the afternoon, a heavy storm arose and the ship sought shelter in Neah Bay. A tug was sent out to look at the condition of the weather, and came back and reported that it was not fit for any vessel to go out on account of the mountain of sea running at twelve o'clock noon. With the weather conditions unchanged the Steamer Goliah gave the said 'C. S. Holmes' a steel cable of five inches thickness which was taken on board and made fast on the forward end of said ship by being placed three times around a square bit; and by order of the captain of the said ship 'C. S. Holmes,' the Steamer Goliah towed her to sea, it taking the steamer seven hours to tow the 'C. S. Holmes' a distance of eight miles.

"That at about seven o'clock and while weather conditions were unchanged the said steamer blew whistle to let go the wire; the captain of the 'Holmes' gave general orders for everybody to go forward and take hold of the wire; the crew held back; when they received the orders the second time everybody went forward, but none went to the wire except the libelant; the captain standing about four feet above the

libelant where he could see everything going on ; libelant being in a position where he could not see the condition of the wire, libelant inquired of the captain how the wire was on the bow, and he was told by the captain that the wire was slack and that everything was all right and to let go ; and libelant let go the lashings and went away as quickly as possible to avoid danger. The wire was tight and sprang back and hit libelant, causing a compound fracture of libelant's right arm, paralyzing and bruising his side."

To this cause of action above set out the appellee excepted as follows :

"Claimant excepts to all such allegations in said amended libel as are allegations of facts purporting to constitute such first purported cause of action, for the reason that such a cause is not an admiralty and maritime cause of action, and is not within the jurisdiction of this honorable court, and for the reason that said amended libel does not allege facts sufficient to constitute such cause of action."

The second cause of action, that is, the allegation charging negligence on the part of the captain in furnishing medical treatment, in the amended libel, is as follows :

"That the captain gave orders to go back to Port Angeles ; libelant requested to be taken to Port Townsend to the marine hospital, but was informed that it would cost \$100 to do so, and

that there was a marine doctor at Port Angeles and so refused; they arrived at Port Angeles at three o'clock in the morning; the libelant again requested to be taken to Port Townsend to the marine hospital and the captain took libelant to Dr. Taylor, wrote out a permit, gave it to the said doctor, informing him at the same time that it was good for all expenses incurred; the said doctor asked the captain to explain the permit; the captain then told him, 'I have nothing to explain; the man is in your care now and he is out of my hands,' at the same time laughing at the doctor in a manner which would indicate that he had knowingly deceived him. The captain knew all the time that there was no marine doctor at Port Angeles, and that the permit was valueless for any purpose other than to be used for admission at the Port Townsend marine hospital. The captain deliberately put libelant off at Port Angeles for the purpose of getting rid of him, knowing and intending that he would at most only receive temporary relief; at the same time he knew or should have known that libelant needed prompt and permanent attention on account of the condition of his injuries.

"That the libelant was taken to the office of the doctor and in the presence of the captain an attempt was made by the then unwilling doctor to fix him up temporarily, which was not successful, and two days later while libelant was still in a helpless condition the doctor requested the libelant to leave; libelant was unable to move; he received no more attention or treatment for six days longer, when with considerable of effort he made his way to Port Townsend;

during the time he was at Port Angeles blood poison set in and after two months' treatment at the marine hospital at Port Townsend an attempt was made to set the bones, but the ends of the bones so broken had commenced to decay by reason of treatment being neglected when injured and the arm was in such condition that the plates used to hold the bones together broke loose and the bones are still continuing to decay."

Appellee excepted to the above cause of action, as follows:

"To all such allegations in said amended libel as are allegations of facts purporting to constitute such second cause of action on the ground that such amended libel does not allege facts sufficient to constitute such a cause of action."

ASSIGNMENT OF ERRORS.

First, the court erred in sustaining claimant's exception to libelant's first cause of action as set forth in his amended libel.

Second, the court erred in sustaining claimant's exceptions to libelant's second cause of action as set forth in his amended libel.

ARGUMENT.

There are two questions presented to the court. First, being a purely legal question whether or not a ship can be held in rem for the negligence of the

master to a seaman; second, whether the amended libel states a cause of action for negligence of the captain in furnishing medical treatment.

Regarding the second cause of action the amended libel alleges that the libelant had both bones of his right arm broken and paralyzed and bruised on his side; that after the injuries the captain put the ship back to Port Angeles, arriving there at about the hour of three o'clock in the morning. He remained aboard the vessel until seven o'clock when the libelant was taken before a doctor at Port Angeles and later temporarily attended to in the presence of the captain; that the captain attempted to deceive the doctor by giving him a permit, the captain knowing that the permit was valueless only for the purpose of being admitted to Port Townsend where the marine hospital is located; that the wound was of such a nature that it needed prompt and permanent attention.

Incidentally the amended libel further charges that the libelant requested the captain to take him to Port Townsend to the marine hospital; that the captain said it would cost one hundred dollars to so do and that the doctor was an "unwilling" doctor.

Libelant's condition, as alleged in the amended libel, is that each end of both bones of his right arm are decaying, that being the result of the neg-

lect in not receiving proper attention at Port Angeles. The question naturally arises who was responsible for that condition. We submit that there can be but one answer according to the allegations of the amended libel and that is, the captain. We venture to say that the decisions failed to disclose a more aggrieved case of want of proper treatment by the captain than was received in this case by the libelant.

The law of course is well settled that it is the duty of the master and owners to see that an injured seaman is properly cared for.

The Troop, 128 Fed. 856.

Respectfully submitted,

DANIEL LANDON,

Proctor for Appellee.

